

Return Address:

Des Moines City Clerk
21630 11th Avenue So.
Des Moines, WA 98198-6398



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DES MOINES CIT ORD-RER 78.00
PAGE-001 OF 007
11/13/2013 11:55
KING COUNTY, WA

WASHINGTON STATE RECORDER'S COVER SHEET

Document Title(s):	Ordinance No 1568
Reference Number(s) of Documents Assigned or Released: (Add'l. Nbrs. on Page ____)	
Grantor(s): (Last, First, Initials)	City of Des Moines, WA
Grantee(s): (Last, First, Initials)	Gerald and Miriam Andrus
Legal Description: (Abbreviated) Additional Legal is on Page 1-3	The East half of 15 th Avenue South adjacent Block 29, New Additional to the Town of Des Moines, Section 08, Township 22 North, Range 04 East, W.M.
Assessor's Property Tax Parcel/ Account Number(s): (If Doc. Has Legal Description)	605240-1655

ORDINANCE NO. 1568

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, vacating a portion of City right-of-way in an area generally described as a portion of public right-of-way on the east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, The City has received a petition from Gerald and Miriam Andrus to vacate a portion of the public right-of-way commonly known as 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines as shown on Exhibit "A", attached hereto and incorporated by reference, and

WHEREAS, the petition was signed by the owners of more than two-thirds of the property abutting the portion of the streets sought to be vacated as required by RCW 35.79.010, and

WHEREAS, RCW 35.79.010 requires that the City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. 1229 fixing the public hearing for July 11, 2013, to be followed by City Council action, and

WHEREAS, notice of the public hearing was given in accordance with RCW 35.79.020 and the public hearing was held before the Des Moines City Council on July 11, 2013, and all persons wishing to be heard were heard, and

WHEREAS, no objections to the vacation were filed by any abutting property owners prior to the hearing, and the City Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public right-of-way subject to this Ordinance consists of portions of public rights-of-way identified as the east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street further legally described in Section 2 of this Ordinance; and

(2) The public right-of-way described in section 2 of this Ordinance was not improved for transportation purposes nor dedicated under the Plat and Subdivision Act of 1969 currently codified as chapter 58.17 RCW, its predecessor the Platting and Subdivision Act of 1937 previously codified as chapter 58.16 RCW or under the Laws of 1889-90; and

(3) The public right-of-way which is described in section 2 of this Ordinance is not necessary for present and future use by public utilities; and

(4) The public right-of-way was recorded as the First Railroad Addition to Des Moines platted in 1890, has never been opened for transportation purposes, and

(5) The public right-of-way described in section 2 is not used at all, for the reason it is not improved; and

(6) The right-of-way is not required for the present and future needs of the citizens of the City of Des Moines for vehicular transportation purposes; and

(7) It is in the public interest to vacate this right-of-way; and

(8) The right-of-way is classified as a Class "C" right-of-way since no public funds have were ever expended in its acquisition; and

(9) Vacation of a Class "C" right-of-way requires no compensation.

Sec. 2. Right-of-way vacation. Subject to the requirement set forth in section 3 this Ordinance, the following legally described public right-of-way as depicted on the attached map (incorporated herein by this reference) entitled Exhibit "A" is

vacated and the property within the right-of-way so vacated shall belong to the respective abutting property owners, one-half to each as required by RCW 35.79.040:

15th Avenue South: The east half of 15th Avenue South adjacent Block 29, New Addition to the Town of Des Moines, according to the plat thereof recorded in volume 4 of plats, page 84, in King County, Washington.

Alley: The west half of the alley adjacent to Block 29, New Addition to the Town of Des Moines, according to the plat thereof recorded in volume 4 of plats, page 84, in King County, Washington. Together with the east half of the alley adjacent to Block 26, New Addition to the Town of Des Moines, according to plat thereof recorded in volume 4 of plats, page 84, in King County, Washington.

Sec. 3. Conditions of right-of-way vacation. The right-of-way subject to vacation under this Ordinance shall be subject to the following conditions:

(1) The abutting property owners shall not be required to pay the City of Des Moines on compensation for vacation of this Class C right-of-way, pursuant to DMMC 12.12.050(2)(b).

(2) The abutting property owners recognize that the City of Des Moines retains an easement or the right to exercise and grant easements for utility purveyors in respect to the land vacated by this Ordinance for the construction, repair, and maintenance of public utilities and services, and that the City of Des Moines will grant utility easements through the right-of-way subject to vacation under this Ordinance:

(a) To protect existing sewer district facilities in locations and dimensions generally described as covering the eastern twenty (20) feet of the area to be vacated within South 15th Street, and covering the entire twenty (20) feet of the area to be vacated within the alley east of 15th Avenue South, which exact locations and dimensions have been provided by Midway Sewer District; and

(b) A non-exclusive perpetual easement ten (10) feet in width having five (5) feet of such width on each side of the centerline of Grantee's facilities as constructed, to be constructed, extended or relocated lying within the twenty (20) foot alley between 15th Avenue South and 16th Avenue and between South 222nd Street and South 223rd Street is hereby granted to Puget Sound Energy, Inc., its successor and assigns, together with the right to erect, lay, construct, support, attach, connect, operate, maintain, repair, replace, improve, remove, extend, enlarge and use any and all of its facilities in, upon, over, under, along, across and through the Easement Area(s) for one or more overhead and/or underground electric utility systems for the transmission, distribution and sale of electricity; and

(c) For the purposes of easement retention, the above-mentioned easement dimensions are based upon being centered over the existing utility facilities.

(3) Petitioner, Gerald and Miriam Andrus, shall be responsible for obtaining and recording all utility easements referenced herein, and provide recorded copies of such easements to the City of Des Moines. If the utility easements are not obtained and recorded, and proof of such provided to the City of Des Moines, within 180 days of the signing of this Ordinance, this Ordinance shall be repealed and the street vacation shall be null and void.

Sec. 4. Easements and reservation of easements.
Pursuant to RCW 35.79.030, the City of Des Moines retains or will be granted easements as set forth in section 3 of this Ordinance and retains the right to exercise and grant easements in respect to the land vacated by this Ordinance and abutting property for the construction, repair, and maintenance of public utilities and services, and for vehicular access.

Sec. 5. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

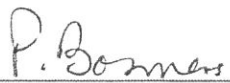
Sec. 6. Recordation. The City Clerk shall cause a certified copy of this Ordinance to be recorded in the records of the King County Recorder.

Sec. 7. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 11th day of July, 2013 and signed in authentication thereof this 11th day of July, 2013.


MAYOR

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk


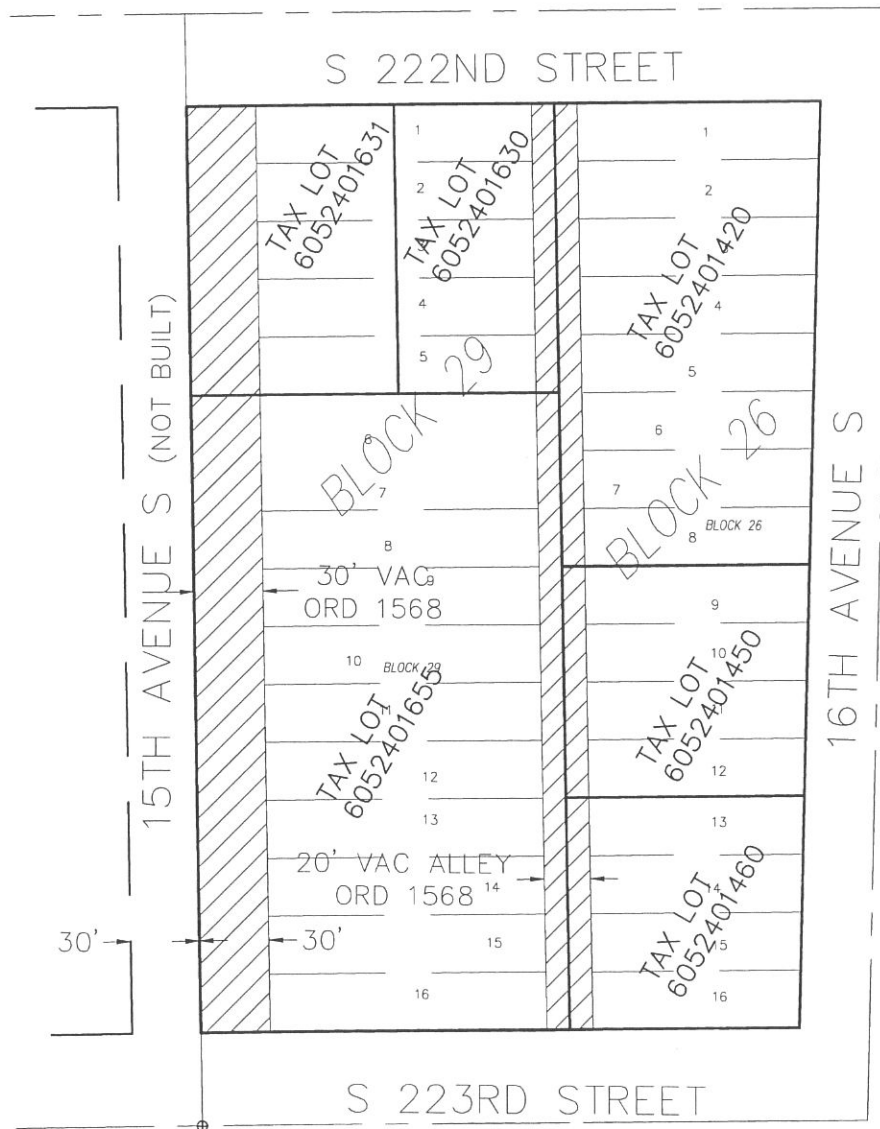
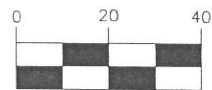
I, Bonnie Wilkins, City Clerk, do hereby certify that the foregoing is a true and correct copy of the original instrument on file and of record in my office in Des Moines, Washington 98198 

EXHIBIT A

CITY OF DES MOINES ORD 1568
SE 1/4 S08, T22N, R04E, WM



GRAPHIC SCALE



(IN FEET)

1 inch = 40 ft.